



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,333	12/21/2001	Gilles Rubinstenn	05725.0974-00	4711
22852 7590 10/09/2007 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER ARAQUE JR, GERARDO	
			ART UNIT 3629	PAPER NUMBER
			MAIL DATE 10/09/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/024,333	Applicant(s) RUBINSTENN ET AL.	
	Examiner Gerardo Araque Jr.	Art Unit 3629	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

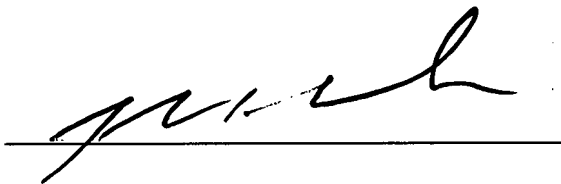
1. In view of the appeal brief filed on 6/13/07, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:



***Priority***

1. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claim 9** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. In regards to **claim 9**, the Examiner believes that the term "database" should not have been deleted, but the term "information" which follows the term "database" in line 2 of **claim 9**.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 1 – 30, 37, 46, and 48** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Linford et al. (US Patent 6,081,611)** in view of **Proactiv ([http://web.archive.org/web/20010521145551rn\\_1/www.proactiv.com/index.php](http://web.archive.org/web/20010521145551rn_1/www.proactiv.com/index.php))**.

7. In regards to **claims 1 and 48**, **Linford** discloses A method for enabling determination of a prognosis for an external body condition of a subject, the method comprising:

receiving at least one representation of the subject's external body condition

**(Col. 1 Lines 35 – 38);**

generating at least one prognosis reflecting predicted changes in the external body condition after use of said at least one beauty product, wherein the generating is based on both the received representation and information contained in the database (Col. 1 Lines 43 – 47); and

outputting the prognosis to enable the subject to receive the prognosis (Col. 1 Lines 43 – 47).

**Linford** discloses a method and system where a patient provides a pre-operative digital image, such as images pertaining to wrinkles or skin imperfections (Col. 25 Lines 19 – 23), and where the image is then manipulated to provide predicted changes based on a cosmetic surgical procedure so that a patient is able to view the after effects of a cosmetic procedure.

**Lindford**, however, fails to disclose:

maintaining, in a database, information of how use of at least one beauty product affects evolution of the external body condition.

However, **Proactiv** discloses how the use of a beauty product affects the evolution of an external body condition, wherein the information is stored in a database.

**Proactiv** discloses how the use of their different products and how the use of various chemicals affect the treatment process

(<http://web.archive.org/web/20010411110515/www.proactiv.com/products/products.php>,

<http://web.archive.org/web/20010215020151/www.proactiv.com/faq/faq3.php>,

<http://web.archive.org/web/20010215020034/www.proactiv.com/faq/faq4.php>,

<http://web.archive.org/web/20010617232049/www.proactiv.com/realstories/real.php>, <http://web.archive.org/web/20010411110141/www.proactiv.com/how/how.php>).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Linford** in view of the teachings of **Proactiv** to provide a database containing information of how the use of a beauty product affects the evolution of an external body condition and to better inform a patient of the benefits and limitations of the procedure.

8. In regards to **claims 2 – 3**, **Linford** discloses wherein the at least one representation defines the external body condition (**Col. 1 Lines 35 – 38; wherein it is obvious that the image is defining a condition since it is a pre-operative image**).

9. In regards to **claim 4**, **Linford** discloses, wherein the prognosis comprises a prognosis image (**Col. 1 Lines 42 – 48**).

10. In regards to **claim 5**, **Linford** discloses wherein the prognosis image comprises a three-dimension prognosis image (**Col. 18 Lines 41 – 42; Col. 25 Lines 25 – 27**).

11. In regards to **claim 6**, **Linford** discloses further comprising enabling the subject to receive instructions relating to obtaining of the representation (**Col. 7 – 8 Lines 48 – 42**).

12. In regards to **claim 7**, **Linford** discloses wherein the instructions comprise instructions relating to capturing of an image with an image capture device chosen from a web cam, a digital camera, and a scanner (**Col. 7 – 8 Lines 48 – 42**).

13. In regards to **claims 8**, **Linford** discloses further comprising constructing an image based on the representation, wherein said generating of the prognosis comprises

Art Unit: 3629

comparing the constructed image to the information in the database (**Col. 7 – 8 Lines 48 – 42; and wherein it is obviously included that the manipulation of the image is accomplished based on the programming parameters, such as removing wrinkles [see for example Col. 24 – 25 Lines 67 – 2]**).

14. In regards to **claim 9, Linford** discloses wherein the wherein the information in the information comprises image morphing information, and wherein said generating of the prognosis comprises morphing the representative image based on the image morphing information (**Col. 20 – 21 Lines 62 – 3**).

15. In regards to **claims 10 and 37, Linford** discloses wherein the representation is received via a network, and wherein the subject is located at a location remote from a location where the database is maintained (**Col. 5 Lines 54 – 57 wherein it would have been obvious for one of ordinary skill in the art that an image can be sent through e-mail**).

16. In regards to **claim 11, Linford** discloses wherein the representation is stored in a data storage device, and wherein said receiving of the representation comprises receiving the data storage device (**Col. 5 Lines 30 – 36**).

17. In regards to **claim 12, Proactiv** discloses wherein the information in the database comprises a plurality of subsets of information, wherein at least some of the subsets of information relate to differing beauty products (**<http://web.archive.org/web/20010215020151/www.proactiv.com/faq/faq3.php>**).

18. In regards to **claim 13, Proactiv** discloses wherein the outputting further comprises outputting product information to enable the subject to be informed about a

Art Unit: 3629

beauty product relating to the information in the database used to generate the prognosis

(<http://web.archive.org/web/20010411110515/www.proactiv.com/products/products.php>,

<http://web.archive.org/web/20010215020151/www.proactiv.com/faq/faq3.php>,

<http://web.archive.org/web/20010215020034/www.proactiv.com/faq/faq4.php>).

19. In regards to **claim 14**, Proactiv discloses wherein the information in the database comprises a plurality of subsets of information, wherein at least some of the subsets of information relate to differing manners of using a beauty product

(<http://web.archive.org/web/20010411110515/www.proactiv.com/products/products.php>,

<http://web.archive.org/web/20010215020034/www.proactiv.com/faq/faq4.php>).

20. In regards to **claim 15**, Proactiv discloses wherein the outputting further comprises outputting usage information to enable the subject to be informed about the manner of beauty product usage relating to the information in the database used to generate the prognosis

(<http://web.archive.org/web/20010411110515/www.proactiv.com/products/products.php>,

<http://web.archive.org/web/20010215020151/www.proactiv.com/faq/faq3.php>,

<http://web.archive.org/web/20010215020034/www.proactiv.com/faq/faq4.php>,

<http://web.archive.org/web/20010617232049/www.proactiv.com/realstories/real.php>

p, <http://web.archive.org/web/20010411110141/www.proactiv.com/how/how.php>).



21. In regards to **claim 16**, **Proactiv** discloses wherein the manners of using differ from one another according to at least one of timing of product usage, the length of time while the product is used, frequency of use of the product, the length of time between each use of the product, the manner in which the product is applied, an applicator device used to apply the product, and the manner of using the applicator device

(<http://web.archive.org/web/20010411110515/www.proactiv.com/products/products.php>,

<http://web.archive.org/web/20010215020151/www.proactiv.com/faq/faq3.php>,

<http://web.archive.org/web/20010215020034/www.proactiv.com/faq/faq4.php>,

<http://web.archive.org/web/20010617232049/www.proactiv.com/realstories/real.php>, <http://web.archive.org/web/20010411110141/www.proactiv.com/how/how.php>).

22. In regards to **claims 17 – 19**, although the **combination of Linford and Proactiv** fails discloses wherein the beauty product is chosen from skin products, hair products, and nail products, moisturizers, wrinkle removers, and hair product chosen from a conditioner and a shampoo the Examiner asserts that it would have been obvious to one having ordinary skill in the art that a variety of beauty products can be used and all would produce the same predictable result of generating a prognosis showing the effects of using a beauty product.

23. In regards to **claim 20**, **Proactiv** discloses further comprising outputting product purchase information enabling the subject to purchase the beauty product relating to the information in the database used to generate the prognosis

([http://web.archive.org/web/20010521145551rn\\_1/www.proactiv.com/index.php](http://web.archive.org/web/20010521145551rn_1/www.proactiv.com/index.php)).

Art Unit: 3629

24. In regards to **claim 21**, **Linford** discloses wherein the generating the prognosis comprises comparing the representation with information in the database and selecting a portion of the information in the database based on the comparing (**Linford discloses that a variety of morphing features can be used to create a prognosis depending on the procedure the customer needs/wants, such as wrinkles or other skin imperfections. See also Col. 25 Lines 19 – 23).**

25. In regards to **claims 22 and 46**, **Linford** discloses wherein the outputting the prognosis comprises transmitting the prognosis via a network (**Col. 5 Lines 53 – 57 and wherein it would have been obvious that if a teleconferencing session is used the images can be transmitted via e-mail, for example).**

26. In regards to **claim 23**, **Proactiv** discloses wherein the at least one beauty product is selected from a plurality of differing beauty products, and wherein the method further comprises receiving a selection of the at least one beauty product

(**<http://web.archive.org/web/20010411110515/www.proactiv.com/products/products.php>,**

**<http://web.archive.org/web/20010215020151/www.proactiv.com/faq/faq3.php>,**

**<http://web.archive.org/web/20010215020034/www.proactiv.com/faq/faq4.php>,**

**<http://web.archive.org/web/20010617232049/www.proactiv.com/realstories/real.php>, <http://web.archive.org/web/20010411110141/www.proactiv.com/how/how.php>).**

27. In regards to **claim 24**, **Proactiv** discloses further comprising enabling the subject to make the selection of the at least one beauty product from the plurality of beauty products

(<http://web.archive.org/web/20010411110515/www.proactiv.com/products/products.php>,

<http://web.archive.org/web/20010215020151/www.proactiv.com/faq/faq3.php>,

<http://web.archive.org/web/20010215020034/www.proactiv.com/faq/faq4.php>,

<http://web.archive.org/web/20010617232049/www.proactiv.com/realstories/real.php>, <http://web.archive.org/web/20010411110141/www.proactiv.com/how/how.php>).

28. In regards to **claim 25**, **Linford** discloses further comprising rendering the prognosis on a three-dimensional mesh image (**Col. 18 Lines 41 – 52; Col. 25 Lines 25 – 27**).

29. In regards to **claim 26**, **Linford** discloses further comprising generating a mathematical model corresponding to a three-dimensional image resulting from the rendering of the prognosis on the three-dimensional mesh image (**Col. 18 Lines 41 – 52; Col. 25 Lines 25 – 27 and wherein it is obviously included that a mathematical model must be used in order to properly carry out the manipulation.**).

30. In regards to **claim 27**, **Linford** discloses further comprising enabling modification of the representative image based on an input by the subject (**Col. 4 Lines 5 – 14**).

31. In regards to **claim 28**, **Linford** discloses wherein the input by the subject further comprises at least one of the addition and removal of wrinkles from the representative image (**Col. 25 Lines 19 – 23**).

32. In regards to **claim 29**, **Linford** discloses wherein said at least one of the addition and removal of wrinkles comprises modifying at least one parameter

associated with a mathematical model corresponding to the image (**obviously included**).

33. In regards to **claim 30**, **Linford** discloses wherein generating at least one prognosis comprises modifying at least one parameter associated with the mathematical model (**obviously included**).

***Claim Rejections - 35 USC § 102***

34. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

35. **Claims 31 – 36, 38 – 45, and 47** are rejected under 35 U.S.C. 102(b) as being anticipated by **Linford et al. (US Patent 6,081,611)**.

36. In regards to **claim 31**, **Linford** discloses a system for enabling determination of prognosis for an external body condition of a subject, the system comprising:

a memory for receiving at least one representation of the subject's external body condition (**Col. 5 Lines 30 – 57**);

a database for storing information on how use of at least one beauty product affects evolution of the external body condition (**Col. 5 Lines 30 – 57**);

a processor for modifying the representation, based on information contained in the database, to generate at least one prognosis reflecting predicted changes in the external body condition after use of said at least one beauty product (**Col. 5 Lines 30 – 57**); and

a driver for outputting the prognosis to enable the subject to receive the prognosis (**Col. 5 Lines 30 – 57**).

37. In regards to **claim 32**, **Linford** discloses a system for enabling determination of a prognosis for an external body condition of a subject, the system comprising:

means for receiving at least one representation of the subject's external body condition (**Col. 5 Lines 30 – 57**);

means for maintaining, in a database, information of how use of at least one beauty product affects evolution of the external body condition (**Col. 5 Lines 30 – 57**);

means for generating at least one prognosis reflecting predicted changes in the external body condition after use of said at least one beauty product, wherein the generating is based on both the representation and information contained in the database (**Col. 5 Lines 30 – 57; Col. 1 Lines 43 – 47**); and

means for outputting the prognosis to enable the subject to receive the prognosis (**Col. 5 Lines 30 – 57**).

38. In regards to **claim 33**, **Linford** discloses further comprising means for enabling the subject to receive instructions relating to obtaining of the representation (**Col. 5 Lines 54 – 57**).

39. In regards to **claim 34**, **Linford** discloses wherein the instructions comprise instructions relating to capturing of an image with an image capture device chosen from a web cam, a digital camera, and a scanner (**Col. 6 – 8 Lines 66 – 30**).

40. In regards to **claim 35** **Linford** discloses further comprising means for constructing a representative image, wherein said means for generating the prognosis

Art Unit: 3629

compares the constructed image to the information in the database (Col. 7 – 8 Lines 48 – 42; and wherein it is inherently included that the manipulation of the image is accomplished based on the programming parameters, such as removing wrinkles [see for example Col. 24 – 25 Lines 67 – 2]).

41. In regards to **claim 36**, Linford discloses wherein the representation comprises at least one image representative image of the external body condition, wherein the information in the database comprises image morphing information, wherein said means for generating the prognosis comprises means for morphing the representative image based on the image morphing information (Col. 20 – 21 Lines 64 – 3).

42. In regards to **claim 38**, Linford discloses wherein the representation is stored in a data storage device, and wherein said means for receiving the representation comprises means for receiving the data storage device (Col. 1 Lines 30 – 36).

43. In regards to **claims 39, 41, and 45**, Linford discloses wherein the information in the database comprises a plurality of subsets of information, wherein at least some of the subsets of information relate to differing beauty products (**The Examiner asserts that the fact that the subsets of information relate to differing beauty products does not affect how the system works. That is to say, the system is capable of performing various manipulations based on the type of skin imperfection. It is inherent that the system would treat the manipulation process differently depending on the type of skin condition. [See also Col. 25 Lines 19 – 23]).**

44. In regards to **claims 40, 42, and 44**, Linford discloses wherein the means for outputting further comprises means for outputting product information to enable the

subject to be informed about a beauty product relating to the information in the database used to generate the prognosis (**Col. 1 Lines 30 – 57, wherein the system is capable of displaying information pertaining to a beauty product with the provided monitor**).

45. In regards to **claim 43**, the Examiner asserts that wherein the manners of using differ from one another according to at least one of timing of product usage, the length of time while the product is used, the frequency of use of the product, the length of time between each use of the project, the manner in which the product is applied, an applicator device used to apply the product, and the manner of using the applicator device does not affect how the system performs the function of manipulating a photo in order to provide a customer with a predicted result of a cosmetic procedure.

46. In regards to **claim 47**, **Linford** discloses a system for enabling determination of a prognosis for an external body condition of a subject, the system comprising:

- a memory for receiving at least one image representative image of the subject's external body condition (**Col. 5 Lines 30 – 57**);

- a secondary storage storing a mesh frame representative of at least one part of human anatomy (**Col. 5 Lines 30 – 57**);

- a database containing information on how use of at least one beauty product affects evolution of the external body condition (**Col. 5 Lines 30 – 57**);

- a processor for rendering the image on the mesh frame and for modifying the image, based on information contained in the database, to generate at least one prognosis image reflecting predicted changes in the external body condition after use of

the at least one beauty product (**Col. 5 Lines 30 – 57; Col. 18 Lines 41 – 52; Col. 25 Lines 25 – 27**); and

a driver for outputting the prognosis image to enable the subject to view the prognosis image (**Col. 5 Lines 30 – 57**).

***Response to Amendment***

47. Applicant's arguments, see **appeal brief**, filed **6/13/2007**, with respect to the rejection(s) of claim(s) **1 – 48** under **35 USC 102(b)** and **35 USC 103(a)** have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

However, upon further consideration, a new ground(s) of rejection is made in view of **Linford et al. (US Patent 6,081,611)**, as well as **Linford et al. (US Patent 6,081,611)** in view of **Proactiv**

([http://web.archive.org/web/20010521145551rn\\_1/www.proactiv.com/index.php](http://web.archive.org/web/20010521145551rn_1/www.proactiv.com/index.php)).

***Conclusion***

48. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure can be found in the PTO-892 Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

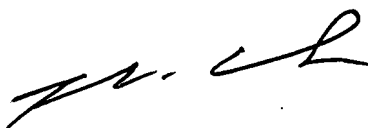
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3629

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GA  
9/27/07



JOHN G. WEISS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600